

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIANNE BARNEY,	:	Case No.
	:	
Plaintiff,	:	
v.	:	
LVNV FUNDING, LLC,	:	<u>COMPLAINT AND JURY</u>
	:	<u>DEMAND</u>
and	:	
LEVY & ASSOCIATES, LLC	:	
	:	
and	:	
YALE R. LEVY,	:	
	:	
and	:	
MATHIAS D. MANNER,	:	
	:	
Defendants.	:	

INTRODUCTION

Plaintiff brings this action pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Ohio Consumer Sales Practices Act (“OCSPA”), Ohio Rev. Code §§ 1345.01 *et seq.* Plaintiff avers that Defendants are debt collectors who have engaged in an unfair debt collection practice and a deceptive consumer practice by issuing to a judgment debtor a notice of deposition in aid of execution in a distant forum, in violation of 15 U.S.C. §§ 1692d, e(9), f and i as well as Ohio Rev. Code §§ 1345.02-.03.

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Jurisdiction over the state claim is proper pursuant to 28 U.S.C. § 1367. Venue is proper in this district because the consumer resides in this district and the conduct complained of occurred in this district.

PARTIES

2. Plaintiff is a resident of Cuyahoga County, Ohio, and is a consumer as defined in 15 U.S.C. § 1692a(3). Any debt she was obligated to pay was incurred primarily for household, family and / or personal purposes. Plaintiff is also a consumer as defined in the OCSA at Ohio Rev. Code § 1345.01(D).

3. Defendant LVNV specializes in the purchase of and the collection of distressed consumer debt consisting of old, defaulted and delinquent obligations or accounts which it purchases at a discount. It is a debt collector as defined at 15 U.S.C. § 1692a(6) because it uses the mails in a business the principal purpose of which is the collection of debts.

4. Defendant Levy & Associates, LLC is a law firm engaged in the practice of collecting debts on behalf of the third parties by filing collection suits. Defendants Levy and Manner are either principals or employees of Defendant Levy & Associates, and are debt collectors as defined at 15 U.S.C. § 1692a(6) because they regularly collect or attempt to collect debts owed or asserted to be owed or due another.

5. All Defendants are suppliers as defined at Ohio Rev. Code § 1345.01(C) in that, subsequent to the consummation of a consumer transaction, they engaged in an attempt to collect a debt.

FACTS

6. Defendants obtained a judgment against Plaintiff in Lyndhurst Municipal Court, Case No. 10cvf00690.

7. On April 30, 2011, Defendant LVNV attempted to collect that judgment by issuing a document entitled “Notice of Deposition in Aid of Execution,” a true copy of which is attached hereto as Exhibit A.

8. This document notified Plaintiff that Defendants would take her deposition in Columbus, Ohio (Franklin County) “for the purpose of locating the nature and extent of his/her assets and income.”

9. Plaintiff has never resided in Columbus, Ohio, or in Franklin County, Ohio.

10. The contract sued upon was not signed in Columbus Ohio or in Franklin County, Ohio.

11. Plaintiff is 67 years old and could not drive 150 miles for 2 ½ hours to Defendants’ office in Columbus. As a result of this notice of deposition for her to appear in Columbus, Plaintiff suffered fear, anxiety, worry and extreme emotional distress.

COUNT I: FDCPA

12. Plaintiff reasserts and realleges each and every allegation set forth above as if fully rewritten herein.

13. Defendants’ use of a notice of deposition to compel the appearance of a judgment debtor in a distant county has the actual consequence of harassing, oppressing and/or abusing Plaintiff in violation of 15 U.S.C. § 1692d.

14. Defendants' use of a notice of deposition captioned in an Ohio municipal court to compel the appearance of a judgment debtor in a distant county constituted the simulation of a document authorized, issued, or approved by that court and created a false impression as to the authorization and approval by that court, which had no jurisdiction to enforce it, all in violation of 15 U.S.C. § 1692e(9).

15. Defendants' use of a notice of deposition captioned in an Ohio municipal court to compel the appearance of a judgment debtor in a distant county was an unfair or unconscionable means to collect or attempt to collect a debt, in violation of 15 U.S.C. § 1692f.

16. The issuance of such a command to appear in a forum distant from the county of Plaintiff's residence violates the venue provision of 15 U.S.C. § 1692i.

17. As a direct and proximate result of these violations, Plaintiff was damaged in an amount to be determined at trial.

COUNT II: OCSA

18. Plaintiff reasserts and realleges each and every allegation set forth above as if fully rewritten herein.

19. The above-described conduct was unfair, deceptive and / or unconscionable within the meaning of Ohio Rev. Code §§ 1345.02-.03.

20. As a direct and proximate result of these violations, Plaintiff was damaged in an amount to be determined at trial.

WHEREFORE Plaintiff prays for the following relief:

A. Compensatory, noneconomic and statutory damages on all claims;

- B. A declaration that Defendants' conduct violated the OCSPA and an injunction permanently restraining Defendants from engaging in the conduct described herein within the state of Ohio and prohibiting Defendants from engaging in the collection of debts within the state of Ohio until they consent to a judgment wherein they formally acknowledge the unlawfulness of their conduct and agree to refrain from such conduct in the future;
- C. Costs and a reasonable attorney fee as provided by the statutes set forth above.
- D. All other relief this Court may deem appropriate at law or in equity.

Respectfully submitted,

/s/ Stephen R. Felson

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JURY DEMAND

Plaintiff demands trial by jury as provided by the Federal Rules of Civil Procedure.

/s/ Stephen R. Felson